

1 GRANT P. FONDO (SBN 181530)
GFondo@goodwinlaw.com
2 **GOODWIN PROCTER LLP**
601 Marshall Street
3 Redwood City, CA 94063
Tel: +1 650 752 3100
4 Fax: +1 650 853 1038

5 *Attorney for Defendant:*
6 CARLOS E. KEPKE

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 CARLOS E. KEPKE,
16 Defendant.

Case No. 3:21-CR-00155-JD

**DEFENDANT CARLOS KEPKE'S
STATEMENT OF NON-OPPOSITION
TO GOVERNMENT'S MOTION FOR
PROTECTIVE ORDER REGARDING
REVIEW OF EVIDENCE OBTAINED
DURING EXECUTION OF SEARCH
WARRANT AT 149 SAGE ROAD
HOUSTON, TEXAS**

Date: June 27, 2022
Time: 10:30 a.m.
Courtroom: 11
Judge: Hon. James Donato

STATEMENT OF NON-OPPOSITION

Defendant Carlos E. Kepke (“Mr. Kepke”) hereby submits this Statement of Non-
Opposition to the United States of America (the “Government”)’s Motion for Protective Order
Regarding Review of Evidence Obtained During Execution of Search Warrant at 149 Sage Road,
Houston, Texas (the “Motion”).

Nearly four years have passed since the Government’s agents seized the documents at issue
in the Motion from the personal residence of Mr. Kepke on August 15, 2018, which included the
following: (i) 4 files related to the 2017 personal taxes for Mr. Kepke; (ii) 1 file for Globix
Investments, LLC; and (iii) 1 file for Robert Esper, and more than a month has passed since the
government’s April 25, 2022 deadline to produce Rule 16 discovery to the defendant.

The Motion asserts that Mr. Kepke voluntarily consented in writing to removal of these files
and thus waived certain constitutional rights and attorney-work product privilege related to those
documents. Without taking a position on the Government’s contentions, Mr. Kepke submits this
statement to indicate his non-opposition to the relief sought in the Motion. Specifically, Mr. Kepke
agrees that the documents and files described in the Motion shall be provided to the Government’s
Filter Team to review for any remaining, or continuing, privilege. Upon completion of this review,
and redaction and/or removal of any privileged communications, the defendant has no objection to
the remaining documents being provided to the Government’s prosecution team.

Mr. Kepke notes for the record that the attorney-client privilege applies to any confidential
communications or information contained within these files. It is black letter law that the attorney-
client privilege is held by the client, not the attorney. Tex. R. Evid. § 503(c); *see* Cal. Evid. Code
§ 954. And Texas law, which governs Mr. Kepke’s relationship with his clients, does not permit

///

///

///

///

attorneys to unilaterally waive the attorney-client privilege; only the client may relinquish that

1 privilege. *See Morrison v. State*, 575 S.W.3d 1, 26 (Tex. App. 2019).

2
3 Respectfully submitted,

4 Dated: June 10, 2022

By: /s/ Grant P. Fondo
GRANT P. FONDO (SBN 181530)
GFondo@goodwinlaw.com
GOODWIN PROCTER LLP

6
7 *Attorney for Defendant:*
CARLOS E. KEPKE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **June 10, 2022**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **June 10, 2022**.

/s/ Grant P. Fondo

GRANT P. FONDO